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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,952	07/15/2003	Al Scoggins	SCOGGINS.UTL	7795
21590	7590	06/28/2004	EXAMINER	
HINKLE & O'BRADOVICH, LLC 395 SCENIC HIGHWAY LAWERENCEVILLE, GA 30045			LEWIS, AARON J	
			ART UNIT	PAPER NUMBER

3743

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/619,952

Applicant(s)

SCOGGINS, AL

Examiner

AARON J. LEWIS

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 and 6 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,4 are rejected under 35 U.S.C. 102(b) as being anticipated by Karell ('746).

As to claim 1, Karell (fig.3) discloses a nasal dilator apparatus, comprising: an elongated band (22) having a first end and a second end (shown in fig.3 as being attached to adhesive pads 20); and a face pad (20) connected to each of the first and second ends.

As to claim 2, Karell discloses an adhesive portion (i.e. pads 20 include an adhesive portion as disclosed at col.2, line 63) connected to one end of each of the face pads.

As to claim 4, Karell (fig.4c) illustrates each of the face pads (49) comprises: an upper strip having an inner surface; and a lower strip having an inner surface and connected to the upper strip, the inner surfaces being generally connected and opposed, wherein the upper and lower strips enclose an end of the band. That is, the face pads (49) of Karell fold around the first and second ends of the resilient band thereby forming an inner surface that adheres to the ends of the resilient band, the inner surface clearly being connected since they are part of a single adhesive pad and are opposed in the folded condition. The face pads (49) of Karell include upper and lower

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strips starting from a most vertical position in use on a patient and moving downward to a position where the pads stop.

3. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Pope, Jr. ('525).

Pope, Jr. (col.3, lines 48-67 and fig.1) discloses a method of opening nasal passages to provide easier breathing through the nose, comprising providing a tangential force (col.3, lines 56-59) on a user's cheek skin (7) on either side of the user's nose (fig.1).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Karell in view of Mitra et al. ('486).

The difference between Karell and claim 3 is a protective tab covering each of the adhesive portions.

Mitra et al., in a nasal dilator including a pad having an adhesive portion (26), teach a protective tab (#27a, 27b as disclosed at col.6, lines 58-65) covering each of the adhesive portions (26) for the purpose of protecting the adhesive until such time as the dilator is applied to a user.

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It would have been obvious to modify the adhesive pad of Karell to include a protective tab covering each of the adhesive portions because it would have provided a means for protecting the adhesive until such time as the dilator is applied to a user as taught by Mitra et al..

Allowable Subject Matter

6. Claims 5 and 6 are allowed.

Conclusion

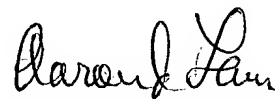
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant nasal dilators.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (703) 308-0716. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AARON J. LEWIS
Primary Examiner
Art Unit 3743

Aaron J. Lewis
June 24, 2004